

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 12, 2003 at 8:07 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 350, 3/5/2003; HB 478, 3/5/2003;
HB 402, 3/5/2003; HB 480, 3/5/2003
Executive Action: HB 40; HB 212; HB 214; HB 66; HB
402; HB 170; HB 171; HB 211

EXECUTIVE ACTION ON HB 40

Motion: SEN. BRENT CROMLEY moved HB 40 BE CONCURRED IN.

Motion: SEN. JERRY O'NEIL moved Amendment HB00402.ajm BE ADOPTED, EXHIBIT (jus52a01) .

Discussion:

SEN. JERRY O'NEIL explained the amendment will allow a police officer to ask a person for their name and present address and an explanation, but until he makes an arrest, he does not have the power to demand a person's name and address. The amendment also provides an officer not in uniform shall inform the person as promptly as possible under the circumstances that he is a police officer.

SEN. DAN MCGEE stated the amendment as proposed needs some commas.

Upon question from CHAIRMAN GRIMES, SEN. MCGEE stated he believed "uniform" was defined somewhere in else in law.

SEN. MCGEE believed the amendment, with appropriate commas, should read "A peace officer acting under subsection (2), while the peace office is not in uniform, shall inform the person as promptly as possible under circumstances, and in any case before questioning, that the person is a police officer."

SEN. MIKE WHEAT agreed with the first three suggested commas, but not the last one.

SEN. MCGEE agreed with SEN. WHEAT.

Ms. Valencia Lane suggested the amendment was correct without the commas.

Vote: SEN. O'NEIL's motion that Amendment HB004002.ajm BE ADOPTED carried UNANIMOUSLY.

Motion: SEN. CROMLEY moved HB 40 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. AUBYN CURTISS felt the amendment improved the bill, but wanted a compelling reason for repealing 46-5-402.

SEN. CROMLEY explained the bill has now combined the provisions of sections 401 and 402.

SEN. McGEE reminded the Committee that this is an important policy decision. **SEN. McGEE** feels this is a 1973 statute which is the year following the adoption of the Constitution and that Constitution addressed the right of privacy. **SEN. McGEE** does not want to tie the hands of law enforcement, but feels there is a balance. Accepting this bill as amended will providing nothing that constrains a law enforcement officer to tell the person that is being stopped as to any rationale as to why they are being stopped. **SEN. McGEE** stated that when he gets pulled over, the first thing he wants to know is why. Now, the officer will not have to tell the individual why he is being pulled over. **SEN. McGEE** wondered who we are trying to protect, the private citizens or law enforcement. **SEN. McGEE** submitted that when law enforcement exercises the executive power to pull someone over, they not only have a legitimate training responsibility to tell people why, but also a statutory reason to tell them. Removing this language will get rid of that statutory reason.

SEN. GARY PERRY informed the Committee that 99.9 percent of the bills they have heard say the person is presumed innocent until proven guilty. There was testimony given which said we need this bill because a guilty person might get away. **SEN. PERRY** told of he and his brother getting pulled over and ordered out of the vehicle without telling them why they were being pulled over.

SEN. O'NEIL agrees, but feels the bill, as is, does not require the officer to state the purpose of the stop. The bill as previously on the books does not have that requirement. If the bill were amended to require the officer to inform as to the reason for the stop, **SEN. O'NEIL** feels it could have negative consequences. **SEN. O'NEIL** believes the police officer should be required to state the reason for the stop, but feels the Committee should be cautious.

SEN. CROMLEY stated the problem is in section 402 which currently requires an officer to provide a reason for the stop and the consequences.

SEN. O'NEIL stated that under section 402 in present law, the officer will inform a person he is a law enforcement officer, that the stop is not an arrest, that it is a detention for investigation, and that upon completion of the investigation, the person will either be arrested or released. At no time is the officer required to state the purpose of the stop. **SEN. O'NEIL**

feels section 402 may provided some technical reasons for a person to be released.

Motion: SEN. CURTISS moved HB 40 BE INDEFINITELY POSTPONED.

Discussion:

SEN. PERRY suggested that moving subsection (4) of Section 402 into Section 401 would preserve existing law.

CHAIRMAN GRIMES wondered if this bill would need to be addressed in a subcommittee.

Vote: The motion of SEN. CURTISS that HB 40 BE INDEFINITELY POSTPONED carried with 7-1 with SEN. O'NEIL voting no and SEN. JEFF MANGAN not voting.

CHAIRMAN GRIMES appointed SENS. CROMLEY, McGEE, and O'NEIL to a subcommittee to work on HB 40. SEN. McGEE will chair the subcommittee.

EXECUTIVE ACTION ON HB 212

Motion/Vote: SEN. PERRY moved HB 212 BE CONCURRED IN. The motion carried UNANIMOUSLY. SEN. WHEAT will carry HB 212 on the Senate floor.

EXECUTIVE ACTION ON HB 214

Motion: SEN. O'NEIL moved HB 214 BE INDEFINITELY POSTPONED.

Discussion:

CHAIRMAN GRIMES explained that by killing HB 214, the current court case of Crisafulli v. Bass, which applies the *Restatement (Second) of Torts*, would basically make this very same wording effective law.

SEN. O'NEIL stated the court will look to case law and it will not be iron-clad law since case law changes within varying circumstances. SEN. O'NEIL feels this situation needs to allow discretion in considering unique circumstances in each individual case.

CHAIRMAN GRIMES felt the Legislature has a responsibility to weigh in on the issue and exercise some control.

(Tape : 1; Side : B)

SEN. WHEAT opined that by the Montana Supreme Court adopting the policy in the *Restatement (Second) of Torts*, that policy became part of Montana case law. If this bill does not pass, a district court will look at the case of Crisafulli v. Bass and fashion jury instructions on the basis of that case. If the Legislature adopts something different, there will be some confusion, but the courts will rely upon the statutes to fashion jury instructions.

CHAIRMAN GRIMES asked the Committee to look at the language and decide whether they have any sympathy with the amendment, and decide whether they want to use "supervise" or "control."

CHAIRMAN GRIMES was concerned killing the bill will raise questions because it could be used by someone as a rationale for bringing forth a different perspective to the court.

SEN. WHEAT disagreed.

SEN. CROMLEY agreed with **SEN. O'NEIL** and feels there is a problem with the wording, although he has not reviewed the case. He does not understand the language in Section 1, subpart (1) that says "knows or has reason to know that his parent has the ability to control the parent's child".

CHAIRMAN GRIMES stated the language would be better if it said "if the parent had the ability to control."

SEN. MCGEE stated at the present moment, he has one daughter in Missoula, and two daughters in Laurel, and does not have supervision or control over any of them.

CHAIRMAN GRIMES informed the Committee that laws in other states regarding this issue, vary greatly. He suggested this issue will take a substantial amount of thought.

SEN. WHEAT read Chief Justice Gray's concurring opinion from the Crisafulli case. Chief Justice Gray predicted there would not be very many cases, and in those cases that are brought, it would be very difficult to prove. **SEN. WHEAT** feels maybe it is best to let the courts deal with this issue over time and see how it plays out.

Vote: **SEN. O'NEIL's** motion that **HB 214 BE INDEFINITELY POSTPONED** carried **UNANIMOUSLY**.

EXECUTIVE ACTION ON HB 66

Motion: SEN. CROMLEY moved HB 66 BE CONCURRED IN.

Substitute Motion: SEN. O'NEIL moved HB 66 BE INDEFINITELY POSTPONED.

Discussion:

SEN. WHEAT likes the concept of having a clearing house for bankruptcy matters. He is concerned that the bill had no opposition in the House, but when it came to the Senate was opposed by many state agencies. He is surprised there was not more negotiation between the Attorney General's office and the agencies. Although he likes the concepts, SEN. WHEAT is concerned for the agencies in terms of their budgets.

CHAIRMAN GRIMES stated agencies do not like to oppose each other if they can help it. He is concerned because there are probably legal secretaries and administrative staff who work on bankruptcies. Also, there is problems with DPHHS and the administration of their bankruptcy actions. For years, there has been a give and take between the Department of Justice and the other departments. CHAIRMAN GRIMES does not want to send a message to the agencies that they have to take all complicated matters to the Department of Justice.

SEN. PERRY stated the opponents' main concern was the finances of the agencies. He suggested the language in the bill is permissive throughout the bill by use of the word "may" and "at the request of." SEN. PERRY suggested amending the language so if the Attorney General's Office is requested to take a case by the agency, then the Attorney General's Office may collect a fee.

CHAIRMAN GRIMES felt SEN. PERRY's suggested change is not a substantial departure from what is done currently, but it may clarify the matter.

SEN. O'NEIL stated the title uses the word "shall" and will make representation of agencies by the Attorney General's Office mandatory. It costs the state additional money when services are duplicated. SEN. O'NEIL feels it is great to have the an agency like the Attorney General's Office where the agencies can go for advice on bankruptcies. He feels the cure is worse than the ailment.

SEN. CROMLEY supports the bill. As he reads the law right now, it is the duty of the Attorney General's office to represent the state in all bankruptcy proceedings. He feels if an agency is

not represented by the Attorney General's Office, it might be subject to a motion to disqualify counsel. Further, **SEN. CROMLEY** stressed the difficulty and uniqueness of bankruptcy proceedings, with its own court and rules of procedure. **SEN. CROMLEY** does not feel an agency like the Department of Environmental Quality (DEQ) should be expending its resources in out-of-state bankruptcy matters.

CHAIRMAN GRIMES stated the real issue is that there are some bankruptcies that would be better served by better bankruptcy expertise being applied.

SEN. O'NEIL has worked on bankruptcies and stated many bankruptcies are cut and dried and does not need expertise, especially in child support bankruptcies. He feels a bankruptcy like W. R. Grace is a whole different story, and should be involved in the bankruptcy.

SEN. MCGEE stated this is a different world today because of large companies like Enron, Worldcom, and W. R. Grace filing for bankruptcy. **SEN. MCGEE** feels HB 66 should be laid carefully away, but suggested the Attorney General's Office should meet with each agency to identify when the Attorney General's Office should be in charge of a case.

CHAIRMAN GRIMES stated there are agencies right now that exercise sound judgment in determining when a case should be shifted to the Attorney General's Office.

(Tape : 2; Side : A)

SEN. WHEAT agrees that bankruptcy is a very specialized area of law and that the Committee needs to consider the policy statement it will be making. Passing the bill will send the message we like the concept of a centralized bankruptcy expert, or group of experts, located in the Attorney General's Office. It makes sense to have a small group of lawyers focusing on bankruptcy laws. This is the more efficient way for the state government to run its business. He feels the Committee should give serious consideration to passing this bill.

SEN. PERRY agreed with **SEN. WHEAT** because he sensed a turf war during testimony. If the state of Montana were a corporation, it would likely have specialized staff to run different operations. He feels the state of Montana should be operated more like a business. If he were in charge, he would call everybody together, and ask them to work together to get things done for the betterment of state government.

Vote: SEN. O'NEIL's motion to INDEFINITELY POSTPONE HB 66, FAILED 4-5 by roll call vote with SEN. MANGAN voting by proxy.

HEARING ON HB 350

Sponsor: Rep. Jill Cohenour, HD 51, East Helena.

Proponents: Lt. Col. Randy Yaeger, Deputy Chief
of the Montana Highway Patrol
Jim Kembel, Montana Chiefs of Police Association,
Montana Police Protective Association
Mike Barrett, Self

Opponents: None.

Opening Statement by Sponsor:

Rep. Cohenour stated HB 350 is a clarification in the listing of the offenses for which patrol officers can make arrests. Illegal transportation of narcotics is language from 1943 when narcotics were the only dangerous drugs. The reference to precursors to dangerous drugs was a concern of the Sheriff Departments, therefore, **Rep. Cohenour** is proposing an amendment.

Proponents' Testimony:

Lt. Col. Randy Yaeger, Deputy Chief of the Montana Highway Patrol, stated the Highway Patrol supports the bill because it modifies existing code and makes it more enforceable for Highway Patrol Officers.

Jim Kembel, representing the Montana Chiefs of Police Association, and the Montana Police Protective Association, stated they need all the help they can get in enforcing Montana's laws.

Mike Barrett, representing himself, submitted written testimony as a proponent of HB 350, **EXHIBIT(jus52a02)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN GRIMES asked **Rep. Cohenour** if she was aware the Drug and Alcohol Task Force proposed allowing the Highway Patrol performing traffic stops for the purpose of looking for drugs.

Rep. Cohenour stated the Montana Highway Patrol works with other law enforcement agencies in doing drug interdiction situations. Part of the concern is that the language is antiquated. The bill does not take away authority, it just brings it into line.

Lt. Col. Yaeger feels the Highway Patrol need clarification of authority. They do not specifically target vehicles and rely upon a traffic violation to initiate a stop. Just because a person looks suspicious is not probable cause to make a stop.

CHAIRMAN GRIMES asked if there would be places and times where the Highway Patrol could provide a useful service, if they were able to provide interdiction services for drugs.

Lt. Col. Yaeger replied that may very well be the case, but they do not have the authority to do so.

SEN. O'NEIL asked if they set up a vehicle check point on the highway, and charged the driver of every third vehicle \$1, how much that would impact the state's budget.

Closing by Sponsor:

Rep. Cohenour stated the language is antiquated and simply needed to be clarified. The Highway Patrol really does have the authority to perform these duties, this just provides them the authority to write the ticket and enforce that part of the law.

Rep. Cohenour pointed out the reason for taking out the reference to illegal transportation was because in order to transport it, you have to be in possession of it. This will provide the Highway Patrol with the same authority other law enforcement has since they are usually the backup for all other law enforcement.

HEARING ON HB 478

Sponsor: Rep. Jim Peterson, HD 94, Lewistown.

Proponents: Robert Throssell, Montana Magistrate's Association

Opponents: None.

Opening Statement by Sponsor:

Rep. Peterson explained HB 478 will allow for the suspension of a driver's license for failure to comply with a penalty, restriction, or condition of a sentence. The bill also provides the procedure for the suspension. **Rep. Peterson** submitted a written copy of his opening statement for the record,

EXHIBIT(jus52a03). The Department of Motor Vehicles supports the bill, but would like to see a July 1, 2003 effective date since they need time to gear up for the implementation. This bill will also generate money for the general fund because when a convicted person who has lost his driver's license has to pay the \$25 reinstatement fee, it will generate \$40 to \$100,000 a year. The implementation cost is \$11,700.

Proponents' Testimony:

Robert Throssell, representing the Montana Magistrate's Association, supports HB 478. **Mr. Throssell** feels the bill will give a tool to the judges to provision their sentences that if the offender does not comply, their license can be suspended. Putting someone in jail actually costs the county or municipality money. The Magistrates Association does not object to a July 1 effective date. **Mr. Throssell** stated the judges do not necessarily support the issuance of a probationary license and that provision will create more work for the Driver's License Bureau. **Mr. Throssell** does not feel the offender needs another chance since they have already been extended every courtesy to comply.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. WHEAT asked **Mr. Throssell** if he would prefer to have the amendment on page 3, line 23, removed.

Mr. Throssell replied he would like that amendment removed.

CHAIRMAN GRIMES asked **Brenda Nordland** if there was another bill to raise the reinstatement fee to \$100 which would have an even greater fiscal impact.

Ms. Nordland, representing the Motor Vehicle Division, Department of Justice, stated the other bill is HB 215. The effect of that bill would be to standardize driver's license reinstatement fees for those that are not currently paying the \$100 fee, an alcohol-based conduct fee. For purposes of HB 478, the assumption was approximately 6,198 driver's licenses would be reinstated each year, following the suspension of approximately 11,000 because of non-pay or nonappearance on criminal cases. The difference would be an additional \$75 to the general fund for each reinstatement.

(Tape : 2; Side : B)

CHAIRMAN GRIMES asked if this would present any administrative challenges.

Ms. Nordland was granted leave to testify as an informational witness. She testified that in 1995, before the non-pay or appear law was changed, which has been very successful, approximately 5.26 percent of the workload on suspensions and revocations dealt with non-pay or appear. By last year 47 percent of the workload on suspensions and revocations came out of non-pay or appears from justice courts. There will be an administrative challenge if the DMV has to deal with another onset of suspensions. They would prefer to see an October 1 deadline, but they would like some programing time. **Ms. Nordland** stated the program is doable, if DMV is given appropriate resources.

SEN. O'NEIL asked how much the actual cost is to the agency to reinstate a license.

Ms. Nordland could put an exact time on the procedure, but responded it is a multi-step task performed by all of their employees. They have to take the non-pay certification sent from the court, ensure they have correctly identified the driver on the request, locate the file, either electronic or paper, making sure every data element in terms of who that person is, enter the suspension, then create and process a letter advising the offender of the suspension. A historical record is created to be used in the event the suspension is challenged. At the end of the suspension, the process is reversed.

SEN. O'NEIL did not believe, and **Ms. Nordland** agreed, \$100 is not out of line for performing the suspension.

SEN. McGEE recounted that in the DUI bills, they determined a revocation was better than a suspension.

Ms. Nordland explained current law provides a distinction between revocations and suspensions. A revocation means a termination of the privilege. In order to regain the privilege, an offender starts at the very beginning of the application process and is required to take the tests. A suspension, on the other hand, suspends the license for a period of time, and then the license comes back into being once the duration of the suspension is over.

SEN. McGEE understands that suspension puts a burden on the department, and as suspension is utilized more and more, it creates a problem for the department. **SEN. McGEE** is wondering if

revocation is easier for the department than suspension of a license.

Ms. Nordland stated the department is better off with suspensions rather than revocations. Revocation will put a burden on the driver exam stations.

SEN. CROMLEY reviewed Section 61-5-214(a)(i) and wondered if the bill does anything not already required.

Ms. Nordland reminded **SEN. CROMLEY** that (a), (b), and (c) are all required conditions which must be met. The bill applies not only to traffic-related citations, but broadens the law to the non-traffic related activities which justice courts and municipal courts have to deal with.

SEN. WHEAT asked **Ms. Nordland** if DMV has the resources available now to comply.

Ms. Nordland replied the assumption in the fiscal note is that they will have to ask for an additional FTE and additional expenditures to fund that FTE in HB 2. Publication of the fiscal note does not authorize the DMV to hire.

Closing by Sponsor:

Rep. Peterson pointed out that the fiscal note does permit one FTE in fiscal year 2004, and two additional FTEs in 2005. Therefore, the expense of the additional resources has been accounted for. In addition, the fiscal note is based on a \$25 reinstatement fee, and if it were to be increased to \$100, you could take the fiscal impact and multiply it by three to see the fiscal impact. **Rep. Peterson** has no objection to an October 1, 2003, effective date.

HEARING ON HB 402

Sponsor: Rep. Parker, HD 45, Great Falls.

Proponents: Mike McGrath, Montana Attorney General
Sgt. Dan Kohm, Cascade County Sheriff's Office
Brant Light, Cascade County Attorney
and Vice-President of the Montana County
Attorneys' Association
Detective Pat Brinkman, Great Falls
Police Department
Jim Smith, Montana County Attorneys' Association,
Montana Sheriff's and
Peace Officers Association
Jim Kembel, Montana Association of Chiefs
of Police, and the Montana Police
Protective Association

Opponents: Mike Barrett, Self

Opening Statement by Sponsor:

Rep. Parker explained HB 402 addresses the growing problem of meth labs in the state of Montana. **Rep. Parker** spoke of violent incidents in Great Falls because of meth addictions. **Rep. Parker** submitted written testimony and a fact sheet regarding the use of meth, **EXHIBIT(jus52a04)**. HB 402 will substantially increase the penalties for producing meth.

Proponents' Testimony:

Mike McGrath, Attorney General of the State of Montana, has never seen anything like what is happening with methamphetamine in the state of Montana. Methamphetamine is incredibly addictive and has a huge impact on other crimes. This is not only a criminal justice problem, but creates problems for communities across the board. It affects social services and children of users. It impacts schools and is very difficult to treat. It requires lengthy inpatient treatment which has a huge impact on communities. HB 402 will increase the sentence for manufacturing meth and will provide a longer time to treat users.

Sgt. Dan Kohm, representing the Cascade County Sheriff's Office, submitted written testimony in support of HB 402, **EXHIBIT(jus52a05)**.

(Tape : 3; Side : A)

Brant Light, Cascade County Attorney and Vice-President of the Montana County Attorneys' Association, stated this is a serious problem in Cascade County. The problem is with the people producing meth for profit. They are selling this drug on the backs of the weak and addicted. This bill will go after these people, who are the worst of the worst. When they arrest meth dealers, they usually find thousands of dollars in cash, which is clear sign they are making money. **Mr. Light** believes we need to take the profit away. A harsh sentence will help in investigation and prosecution. Cascade County has been devastated by this crime.

Detective Pat Brinkman, representing the Great Falls Police Department, works with street crimes in Great Falls, including meth labs and gang activity. **Detective Brinkman** and his partner discovered a fire in a multiple-family apartment building in Great Falls. The fire caused extensive damage and was a huge monetary loss for its landlord and tenants. During investigation, it was discovered a methamphetamine lab had exploded and caused the fire. The operators of meth lab ran from the scene without calling the fire department or alarming the other tenants. One of the individuals involved in this meth lab was 15 years old. The apartment is still not inhabitable because there are no existing standards defining what is clean and acceptable. Extensive testing must be done on this building at a huge cost. **Detective Brinkman** explained that meth addicts only care about the drug and have no conscience about the safety of others. **Detective Brinkman** explained the use of gas generators and their evidence of how many times a meth lab has cooked its product. Two kids in Great Falls found a discarded gas generator, and one kid was hospitalized with second-degree burns. Garbage from meth labs poses a huge health risk to whoever comes into contact with it.

Jim Smith, representing the Montana County Attorneys' Association and the Montana Sheriff's and Peace Officers Association, testified that it seems Cascade County is the epicenter of the epidemic, but that changes from year to year. The problem is not localized to large cities in Montana, and exists in even the most rural of Montana counties.

Jim Kembel, representing the Montana Association of Chiefs of Police and the Montana Police Protective Association, feels the bill will improve the safety of Montana for both citizens and law enforcement.

Opponents' Testimony:

Mike Barrett, representing himself, believes there is a better way of controlling the problem and feels increasing penalties will not be a deterrent to the problem. He feels people will take risks to escape boredom. He feels the solution is in demilitarizing school curriculums. **Mr. Barrett** feels the policy should be shifted to prevention and safe drug use.

Questions from Committee Members and Responses:

SEN. PERRY asked about the language on page 2, line 2, and wondered when the operation of an unlawful clandestine lab would not create a substantial risk of death or serious bodily injury to another.

ATTORNEY GENERAL McGRATH stated that is a good point, but supposed there could be a scenario where a lab is recovered in the middle of field and no one is around. However, even under those circumstances, law enforcement and other individuals responsible for cleaning up meth labs are put in danger.

SEN. PERRY stated **Mr. Barrett** brings a good point, and wonders if lengthening a sentence is a deterrent to a person operating a meth lab.

ATTORNEY GENERAL McGRATH agreed saying sentences do not often serve as a deterrent. The lengthening of a sentence is a very good tool in terms of investigative procedures and in bargaining and plea bargaining. In addition, there is the problem with treating meth addicts. The longer period of time an offender has to comply with sentencing conditions, the better.

SEN. PERRY asked if there is a reward program in existence for reporting meth labs.

ATTORNEY GENERAL McGRATH replied there may in individual communities, but there is not a statewide program.

SEN. O'NEIL stated he is considering proposing an amendment to require a minimum of ten years hard time.

Rep. Parker is not favorably inclined to mandatory minimum sentences because there may be situations where a sentencing judge may believe a lesser sentence might make sense for a first-time offender or an 18 year old. Many of the offenders in Cascade County have been very young, and **Rep. Parker** feels it would make sense to grant discretion to the judge.

SEN. O'NEIL stated that given the fact that for the 35 people arrested last year for operating a meth lab, the average sentence was 4.6 years, he would like to know what we are gaining by changing the maximum sentence from 25 years to 50 years.

Rep. Parker knows from prosecuting cases that he has seen persistent felony offenders sentenced to more than the maximum sentence. Even though 4.6 was the average sentence, he sees sentences increasing as judges around the state gain a greater appreciation to the inherent dangers these labs pose. In addition, longer sentences can be part of deterrent strategy by this legislature and by the state of Montana. Rep. Parker asked the Committee to consider this bill in conjunction with SJR 11 by **Sen. Schmidt**. SJR 11 calls for an interim study to address treatment issues. **Rep. Parker** hopes that if HB 402 is passed into law, there will be some sort of a public education campaign to notify all residents of the state that penalties are increased, but the preferred choice will be for individuals to check themselves into treatment before they are arrested and to set up a payment plan with a rehab center or clinic.

SEN. O'NEIL inquired if an individual can be sentenced to more than the maximum now, and we are going to have an interim study to determine what the correct procedure should be, whether Rep. Parker feels the bill is premature.

Rep. Parker drew the distinction between incarceration of serious offenders and rehabilitation for the average meth addict charged with possession of dangerous drugs, as opposed to operating a lab. **Rep. Parker** felt it is clear from the testimony that when individuals produce the meth, they create a whole new generation of addicts who have to beg, borrow, and steal to fuel their habit. By increasing the penalties for the people who are creating the addicts, Montana can get a handle on the problem. HB 402 only tackles part of the problem. **Rep. Parker** feels that if we want to get after the garden-variety user, we need to evaluate our treatment options in Montana. It has become clear the state does not have enough opportunities to address treatment for addicts. Therefore, he feels SJR 11 and HB 402 need to both be passed.

SEN. McGEE asked why the fine of \$50,000 on page 1, line 30, and \$100,000 on page 2, line 6 is not being increased.

Rep. Parker stated he did not seek to increase fines since they are already substantial. His experience from prosecuting these cases has shown these individuals do not have the ability to pay fines. Therefore, he decided to increase the incarceration period rather than increase the fine.

SEN. McGEE asked if law enforcement usually finds cash money when they bust meth labs.

Rep. Parker stated often times they will find money or a vehicle that has been purchased with drug money. Those assets are seized in accordance with the law. The prosecutor will initiate a forfeiture proceedings and the funds will go to pay for different items for law enforcement agencies to assist them in their investigations.

SEN. McGEE stated testimony from law enforcement was that the value of these drugs on the street has generated millions of dollars in potential revenue. **SEN. McGEE** was curious what happens when there is a bust and they find a substantial amount of money.

Mr. Light explained they do a seizure and forfeiture. It does not have to be a large amount of money. Last week he forfeited \$10,000 on one case and \$230 on another. If there is anything they can seize, they take it. They then go through civil procedure and usually obtain a default. The money then goes back to the drug forfeiture fund of the agency that made the bust. It is used to buy equipment and conduct undercover operations.

SEN. McGEE asked what would happen if they caught a king pin, and whether they could get access their bank account.

Mr. Light replied they will try. His experience has been that these individuals do not put their money into bank accounts. Often times, they own safes and sometimes the money is in the safe, and sometimes it is not.

(Tape : 3; Side : B)

SEN. CROMLEY asked what tools are available to law enforcement in terms of seizure of real property.

Mr. Light responded they file a forfeiture. First they will determine whether there is a lien on the property. They must show to the court that the property was either used in manufacturing illegal drugs or purchased with the proceeds of manufacturing illegal drugs. It is up to the court to make a determination. Initially, law enforcement will seize anything they feel has any type of value.

SEN. WHEAT asked if **Rep. Parker** if he was involved in the investigation and prosecution of the fire which was testified to earlier by **Detective Brinkman**.

Rep. Parker stated he is somewhat aware of the situation, but did not personally work on the case.

SEN. WHEAT wondered if the individuals involved were charged and convicted under Section 45-9-132.

Rep. Parker responded he did not have specific knowledge, but believed the perpetrators were charged under existing law, and their cases are still pending.

SEN. WHEAT stated Section 45-9-132 was passed during the last session, and wondered if the crimes occurred prior to 2001.

Rep. Parker was sure the incident happened after the new penalties were enacted.

SEN. WHEAT explained he is trying to find out if any of the individuals involved in the four-plex fire had been charged under Section 45-9-132, so they could be convicted under that statute.

Mr. Light's understanding is that the case is still pending, but the individuals were charged under Section 45-9-132.

SEN. WHEAT asked if Section 45-9-132, as passed in 2001, had provided for higher penalties, how that would have helped in the prosecution and conviction in the case of the four-plex fire.

Mr. Light stated he is not sure the statute will help on any one individual case that he is free to discuss. Overall, he believes increased penalties will assist law enforcement because it is a deterrent to the big dealers. As a matter of fact, when the penalty is higher, snitches and informants are more cooperative.

Mr. Light discussed a provision of HB 402 which requires offender registration. Registration of sexual and violent offenders has been unbelievably effective in Cascade County. There is a full-time detective who tracks these offenders. The fact they can follow up with these offenders is a tremendous asset to law enforcement.

SEN. WHEAT agrees with the Attorney General that sentencing is not necessarily a deterrent, but it is a useful tool in plea bargaining. **SEN. WHEAT** wonders if it takes a rocket scientist to figure out there is an epidemic and that treatment is one of the things needed to solve the problem. He wonders if **Rep. Parker** proposed any legislation, or knows of any, to find additional revenues to fund treatment programs for younger people who are at the early stages of experimenting with methamphetamine.

Rep. Parker responded that he does not know of any legislation that far advanced as far as proposing new revenue for a specific program. The Great Falls mayor has become aware of a meth initiative in the state of Wyoming that has been very successful. He is sure **Sen. Schmidt** raised that concept in the context of the resolution. **Rep. Parker** feels it might make sense to study what kind of program, or combination of programs, would make sense, so when the state does come forth with revenue, they will have already identified the most effective possible mechanisms for using that money.

SEN. WHEAT thanked **Rep. Parker** for allowing him to vent his frustrations with the Legislature's failure to provide funding for treatment plans.

SEN. McGEE asked if the state has ever considered using some of the forfeiture monies as rewards for turning in meth manufacturers and offenders.

ATTORNEY GENERAL McGRATH replied that it has been his experience that most law enforcement officers do not support reward programs. First, law enforcement receives a lot of inaccurate and unreliable information. It takes a lot of resources to follow up on that information. It is difficult to take a witness who has received a big reward to trial and not have a defense attorney make an issue about the award. The Crimestoppers program is available to the drug enforcement area. However, one of the policies of Crimestoppers is that the rewards stay small and manageable.

CHAIRMAN GRIMES was intrigued by the offender registration issue and asked where that idea came from.

Rep. Parker stated **Rep. Harris** proposed the amendment during the Committee hearing in the House. **Rep. Parker** feels this aspect could be useful because an offender has to register even after the term of their sentence expires.

CHAIRMAN GRIMES thought the idea was excellent and complimented **Rep. Parker** and the House for adding the provision. **CHAIRMAN GRIMES** asked **Mr. Kohn** about the gravity of the situation in Great Falls and elsewhere in the state and asked if the problems with meth has actually decreased in some places.

Sgt. Kohn replied he is asked often by law enforcement as to why Cascade County is the meth capital of the world. His response is that they are educating the public in Great Falls as to the indicators of meth labs users. By doing this, they are training other people to recognize the problem. They are getting a large

response from members of the community because of their heightened awareness.

CHAIRMAN GRIMES stated in the Task Force they came up with attempting to shut down the transportation of meth through drug interdiction through traffic check points in the areas where there is grave concern. **CHAIRMAN GRIMES** asked for suggestions on how to stop this epidemic from spreading.

Sgt. Kohm reported they have not used traffic stops, but their new federally funded task force will bring in a large influx of state, local, and federal agencies into one group to work meth cases. With that, they are encouraging the use of the Montana State Highway Patrol as part of the task force.

CHAIRMAN GRIMES encouraged them to keep considering the use of traffic check points, although he admitted it is very volatile as far as civil rights issues and jurisdictional issues among law enforcement. **CHAIRMAN GRIMES** asked **Mr. Light** about his statement that increasing penalties makes users more afraid and wondered if the same holds true for other drugs and DUI penalties.

Mr. Light responded, in his opinion and based on his law enforcement career, that is absolutely true. He truly believes increasing the penalties will assist law enforcement, not only in putting kingpins in jail, but also in the investigation and prosecution.

CHAIRMAN GRIMES stated he has been informed by national experts that following meth epidemics, there is a wave of club drugs. **CHAIRMAN GRIMES** asked **Mr. Light** if he has seen evidence of this.

Mr. Light, personally, has not witnessed an increase in club drug usage.

SEN. McGEE asked if treatment would be of any benefit at all to a kingpin, and **Mr. Light** quickly responded no.

SEN. WHEAT asked **Attorney General McGrath** if he had any discussions with anyone related to education, so they can begin educating youth. **SEN. WHEAT** reminded the Committee the law of supply and demand works in the arena of crime as well.

Attorney General McGrath replied there are substantial ongoing efforts in that area right now, and they are in the process of working on a comprehensive methamphetamine initiative that will include not only law enforcement, but also treatment and education. Any of those three areas by themselves, will not accomplish much, and it will take a three-pronged effort. There

is a contract with the "Most of Us" at MSU in Bozeman to develop an educational program. They received a federal grant from the Office of Drug Control Policy to work on meth-related issues. From that grant, **Attorney General McGrath** would like to obtain an educational program and template that will be sustaining for at least a decade, if not longer. This is a huge problem with a lot of complicated parts. They will attempt to target certain audiences, particularly young females because a lot of the meth use they see is by young females who start in this area because of the potential for weight loss. They are hoping to develop a very comprehensive educational program. **Sen. Schmidt's** resolution will follow up on the work the Drug Task Force did.

CHAIRMAN GRIMES thanked **Attorney General McGrath** for helping with the increased focus on the methamphetamine problem during this legislative session. In addition, **CHAIRMAN GRIMES** commented that Great Falls has a comprehensive approach to the problem, and is a model for the rest of the state.

Closing by Sponsor:

Rep. Parker stated they have tried to establish the link between meth use and a broad range of community crime. **Rep. Parker** asked the Committee to understand that they have only begun to scratch the surface as to how this drug is linked to crime. There is the crime aspect, the addiction aspect, and you cannot ignore the fact that the labs themselves are dangerous, and they pose a huge health risk to innocent neighbors.

HEARING ON HB 480

Sponsor: **Rep. Donald Steinbeisser, HD 100, Sidney.**

Proponents: **David Halvorson, Self**

Opponents: **None.**

Opening Statement by Sponsor:

Rep. Steinbeisser stated his intention in bringing HB 480 is to increase the penalty for leaving the scene of an accident. In particular, the bill is meant to address the situation where someone runs into your car when it is parked and leaves. **Rep. Steinbeisser** stated the bill was overhauled by the House Judiciary Committee, but **Rep. Steinbeisser** feels there should be a higher minimum fine. Also, in subsection (3), he would like to see the fine raised from \$10 a day to \$20 a day.

Proponents' Testimony:

David Halvorson, representing himself, is not as enthusiastic about the bill after it was presented in the House. Nevertheless, he still supports the bill. **Mr. Halvorson** testified that since moving to Helena in December 1997, he have had vehicles run into and discovered it later. The first two times was with a pick up truck that was parked with one tire up on the curb. Yet, on two different occasions, the mirror was clipped off. The third time **Mr. Halvorson's** car was hit, the cost to repair his car was \$1,500. In reviewing the applicable code, **Mr. Halvorson** discovered the first offense for leaving an accident is \$10 to \$100. **Mr. Halvorson** feels the current law does not provide an incentive for a person to do the right thing. **Mr. Halvorson** compared this offense to the felony offense of someone stealing his stereo. **Mr. Halvorson** feels the changes made to the bill by the House are not much better than the original law. He still supports the bill because it does provide an increase in penalty, but he is disappointed the minimum fine is still \$10. **Mr. Halvorson** was told changing the penalties has a ripple effect in the law. Although he is unaware of how that works, **Mr. Halvorson** hoped someone else does so they could mitigate or nullify those effects.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. PERRY stated he would hold his questions and comments until executive action.

Closing by Sponsor:

Rep. Steinbeisser stated in Wyoming the first offense for leaving the scene of an accident is \$200 and not over 20 days in jail. The second offense within the same year is up to \$300 and up to 30 days in jail, or both. The third offense in the same year is up to \$500 and six months in jail. **Rep. Steinbeisser** would like to up the minimum requirement on current law.

EXECUTIVE ACTION ON HB 402

Motion: **SEN. CROMLEY** moved **HB 402 BE CONCURRED IN.**

Motion: **SEN. O'NEIL** moved **HB 402 BE AMENDED** and submitted **EXHIBIT(jus52a06)** as his proposed amendment which would raise the fine from \$50,000 to \$1 million.

Discussion:

SEN. O'NEIL stated testimony indicates there is a lot of money to be made manufacturing meth. In Flathead County, one drug manufacturer had a ranch worth several million dollars. To send a serious message the fine should be raised to \$1 million.

SEN. WHEAT appreciated **SEN. O'NEIL's** concern, but from the testimony, the real hammer needed is the time in prison, not the fines. **SEN. WHEAT** feels the \$1 million dollar fine is too extreme and will not send the right message.

SEN. MCGEE stated it is almost an obscene amount of money to put into code as a possible fine. At the same time, **SEN. MCGEE** recognizes this is a very insidious problem. He does not know how much of a deterrent any fine in code is. It will, however, give the court an additional tool. Even though the fine seems radical, he is willing to give it a chance. **SEN. MCGEE** asked **Ms. Lane** to explain why the amounts in subsections (2) and (3) are different.

Ms. Lane explained subsection (4) is different because it applies to the use of a firearm or booby trap. Subsection (3) is a greater penalty because it involves substantial risk of death or serious bodily injury, or is within 500 feet of a business, or takes place in the presence of someone less than 18 years of age. If subsections (3) and (4) do not apply, then it falls under subsection(2).

SEN. MCGEE stated the amount of time in prison is doubled, and wanted to know if **SEN. O'NEIL** would like to address that in his amendment.

SEN. O'NEIL stated he would support a second amendment to address that issue. **SEN. O'NEIL** went on to explain one of the reasons for his amendment is to raise public consciousness about the problem, and he believes raising the fine to \$1 million will show the public Montana is serious about getting a handle on this situation.

SEN. MCGEE reminded the Committee about the anti-drug commercials on television and the reference to "it's the money."

CHAIRMAN GRIMES commented that he understands the passion behind the amendment, but he feels that if this is the way the Committee wants to go, there should be a separate bill, and it should be in the confiscation codes. Adding an fine amount such as this to the Code raises other issues, including constitutionality questions.

SEN. MCGEE asked about the title not mentioning anything about fines, and wondered if the amendment would then be outside the title of the bill.

Ms. Lane agreed that argument could be made. In addition, **Ms. Lane** pointed out the Article II, Section 22, of the Montana Constitution, prohibits excessive sanctions and provides that excessive bail or fines shall not be required along with cruel and unusual punishments inflicted.

SEN. CURTISS asked if they could require an offender to pay for the cost of their incarceration, as far as their means could stretch.

CHAIRMAN GRIMES believed law enforcement could confiscate just about as much as they need to cover social costs.

SEN. O'NEIL asked if the Constitution says there should not be excessive penalties.

Ms. Lane clarified the Constitution says there shall not be excessive fines.

SEN. O'NEIL then asked if the average period of incarceration for manufacturing meth currently stands at 4.6 years, and the bill raises that period to 50 years, whether that could be viewed as an excessive penalty.

Ms. Lane clarified the Constitution says, "Excessive bail shall not be required or excessive fines imposed."

Vote: **SEN. O'NEIL's** proposed amendment, Exhibit 6, **FAILED with SENS. O'NEIL, CROMLEY, and MCGEE voting aye.**

Discussion:

SEN. PERRY supports the bill and asked what the difference is between the operation of an unlawful clandestine laboratory in which one would be producing dangerous drugs, as described in 45-9-132, and criminal production or manufacture of dangerous drugs.

Ms. Lane was uncertain of the question, but explained the clandestine lab is if a person sets up equipment or supplies and preparation for the production or manufacture of dangerous drugs. Section 45-9-110, but she believes that is the actual production. A person could be charged under both sections.

SEN. PERRY pointed out that 45-9-132 uses the word "operation." It seems to him the two statutes are very close. **SEN. PERRY**

feels increasing the penalties in 45-9-132, but in 45-9-110 the sentence is not less than five years or more than life. He feels the two sections should be consistent.

CHAIRMAN GRIMES stated it appears the criminal production or manufacture of the drugs would be a term not less than 40 years.

SEN. CROMLEY agreed generally, but thinks 45-9-132 is almost like a lesser included offense and is probably easier to prove than 45-9-110 where they need to caught producing the drugs. He thinks the lesser included offense should probably have lesser penalty.

CHAIRMAN GRIMES stated they penalties are not identical. One penalty is not less than forty or more than life for the production, and the lesser offense, the procurement of the precursors, would be up to forty. This is better than the disparity that existed before between the two sections of Code.

SEN. PERRY commented that the penalties contained in subsection (2) line 26, page 1, are less than the penalties contained in subsection (3). He wonders what does not create a substantial risk of death or serious bodily injury to another if someone is operating a clandestine laboratory. He feels it is safe to assume that is the case every time, and that subsection (2) could be eliminated. This would strengthen the Code and make it one law. **SEN. PERRY** feels the substantial risk of death to somebody exists in every case.

(Tape : 4; Side : B)

CHAIRMAN GRIMES asked if **SEN. PERRY** is suggesting removing the qualifications under subsection (3).

SEN. PERRY agreed they should be removed.

SEN. WHEAT responded to **SEN. PERRY's** suggestion, stating this is a tiered level of growing culpability. Subsection (2) is the generic clause, and in subsection (3), a prosecutor would have to prove one of the listed qualifications. These are additional elements to be proved at trial. Subsection (2) makes it easier for the prosecutor. Subsection (4) recognizes that when a firearm or booby trap is involved, and it can be proven, the penalty is enhanced. **SEN. WHEAT** does not feel it hurts anything to leave subsection (2) in. **SEN. WHEAT** reminded the Committee that this law was just passed by the 2001 Legislature, and he believes the Committee should think hard about suggesting the removal of subsection (2). This subsection gives the prosecutor more discretion in how they prosecute their case.

SEN. PERRY stated it was not his intent to eliminate subsection (2) and make it more difficult to prosecute. He prefers to eliminate the specifications in subsection (3) and make it more simple to prosecute.

SEN. CROMLEY stated he is reluctant to tamper with the bill too much without additional hearing. The way the bill is now, it gives a good tool to the prosecuting agency and gives them room to negotiate as to charging under subsection (2) or (3).

SEN. CROMLEY withdrew his motion.

EXECUTIVE ACTION ON HB 170

Motion: **SEN. CROMLEY** moved **HB 170 BE CONCURRED IN.**

Motion: **SEN. CROMLEY** moved **Amendment HB017001.av1 BE ADOPTED, EXHIBIT(jus52a07).**

Discussion:

CHAIRMAN GRIMES referred to information distributed to the Committee, **EXHIBIT(jus52a08).**

Ms. Lane explained she worked with John Connor on the amendments, and he had suggested at the hearing that the language that was added by the House on page 3, line 2, did not make sense and suggested it should be reworded to say the conditions must have some correlation to the underlying offense. The amendments on page 3, lines 1 and 2, strike the "however phrase" inserted by the House and moves it over to page 2, line 25. **Ms. Lane** feels that particular amendment more properly belongs in subsection (7)(c). The title is amended accordingly.

SEN. CROMLEY stated a viable option would also be to remove the amendment added by the House.

Upon question of **CHAIRMAN GRIMES** as to what the scope of the conditions of the original sentence means, **Ms. Lane** reminded him of the purpose of the bill and that subsection (c) was passed in the 2001 session and it provided that even if the judge found the offender had not violated a condition of a suspended or deferred sentence, he could still impose new conditions. He could set, modify, or add conditions of probation. This did not contain a retroactive applicability section in that bill. As it turned out, subsection (7)(c) is beneficial to defendants, as well as prosecutors. Defendants were not allowed to take advantage of it, because the Supreme Court said it did not apply retroactively to someone's sentence that had been imposed prior to the

enactment of subsection (7)(c). HB 170 was drafted to make it retroactive. The House, in an attempt to improve the bill, threw in a "however" clause that said any new conditions had to be within the scope of the conditions in an attempt to say, for instance, if you committed a traffic offense, a new condition could not say you had to register as a sexual offender. **Mr. Connor** suggested the House amendment could be better worded, and **Ms. Lane** is suggesting it could be in a better place.

CHAIRMAN GRIMES feels the court could be challenged on what the correlation or connection is and feels it is not necessary.

SEN. CROMLEY withdrew his motion.

Motion: **SEN. CROMLEY** moved to amend HB 170 by striking language on page 3, lines 1 and 2, which was added in the House.

Discussion:

SEN. O'NEIL stated he believed the House was trying to prevent the law from being *ex post facto* (after the fact is done) since the conditions of the new sentence are actually more severe than what they were originally sentenced for. **SEN. O'NEIL** believes it is unconstitutional to come back and sentence someone again more severely.

Ms. Lane explained the House was attempting to put into statute some type of limitation on what the Court can do. You cannot punish someone for doing something that is not illegal at the time. She believes the House was trying to state specifically what should be the case anyway. **Ms. Lane** suggested that what the House was attempting to do, did not need to be done. Arguments could be made to subsection (7)(c) because that says a sentence can be changed.

SEN. PERRY stated **SEN. O'NEIL's** concern would not happen because it is unconstitutional. In addition, the amendment addresses a petition for revocation, and the amendment makes sense to **SEN. PERRY**.

SEN. O'NEIL explained if an offender is sentenced to ten years in prison, and then later is sentenced to 20 years in prison, that does not fall within the scope of their original sentence.

Ms. Lane directed the Committee to subsection (7)(c) on page 2, lines 23-25, they are not talking about changing the sentence, but rather changing, setting, modifying, or adding conditions of probation.

SEN. CROMLEY presented an example of an offender being on probation for ten years and is required to report monthly to his probation officer, but instead leaves the state, the judge may require the person to then report weekly. This condition would be more stringent than the original condition, but would be allowable under this bill. It would not be allowable under the House amendment, because it would not be within the scope or conditions of the original sentence. That is why **SEN. CROMLEY** feels it should be removed.

Vote: **SEN. CROMLEY's** motion to amend HB 170 by striking language added by the House on page 3, lines 1 and 2, **carried UNANIMOUSLY.**

Motion: **SEN. McGEE** moved **HB 170 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. McGEE looked at the ex post facto portion of the Constitution and it looked to him like it spoke mostly to contracts. **SEN. McGEE** stated there are two perspectives, one from present day how to get at the guy, and another to look at how the person was sentenced ten years ago and the conditions of his probation at that time. The arguments in favor of the bill feel this will give the court more options. **SEN. McGEE** would like to know how changes in the law affect individuals sentenced under old law.

SEN. WHEAT stated what the court did in the case referred to in the bill, involved a sex offender who violated conditions of his 1984 suspended sentence, but was allowed to stay in the community under new conditions. The court stated the new conditions could not be imposed. HB 170 is attempting to give the court more flexibility in these instances.

SEN. WHEAT feels the courts should have that flexibility.

SEN. PERRY added the rules do change once an offender has violated the conditions of a deferred sentence. Under subsection (7)(a), if the judge finds an offender has violated the terms or conditions of a suspended or deferred sentence, the judge may revoke the suspension of sentence and require the offender to serve either the sentence or a lesser sentence.

(Tape : 5; Side : A)

With the new bill, it will be better for both the taxpayers and the offenders.

Vote: SEN. McGEE's motion that HB 170 BE CONCURRED IN AS AMENDED carried UNANIMOUSLY. SEN. CROMLEY will carry HB 170 on the Senate floor.

EXECUTIVE ACTION ON HB 171

Motion: SEN. McGEE moved HB 171 BE CONCURRED IN.

Motion: SEN. McGEE moved Amendment HB017101.av1 BE ADOPTED, EXHIBIT(jus52a09).

Discussion:

SEN. McGEE stated the amendment was the concept of John Connor, of the Department of Justice, to bring finality to the issue as to when the time for appeal to the Montana Supreme Court expires or, if the appeal is taken to the Supreme Court, when the time for petitioning the U.S. Supreme Court expires or, if the review is sought in the Supreme Court, that the final order is issued. The bill only provided one year after judgment becomes final, but the question was then when did judgment become final. The amendment spells out when that will happen.

SEN. WHEAT explained that 46-21-102, post-conviction hearing, has the same time frames and wording. Mr. Conner wanted consistency between the post-conviction time frames, as well as the appeal time frames.

CHAIRMAN GRIMES thought it odd that someone would take their case all the way to the U.S. Supreme Court and then decide to plead innocent. There will be an applicability date for offenders who plead guilty after the effective date.

Vote: SEN. McGEE's motion that Amendment HB017101.av1 BE ADOPTED carried UNANIMOUSLY.

Motion: SEN. McGEE moved HB 171 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. O'NEIL believes the language inserted by the House "except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice," should be taken out. SEN. O'NEIL does not believe Montana should advertise that you can have a claim that there is a fundamental miscarriage of justice but you cannot withdraw your claim or do anything about it. He believes that is the way the language sounds. He does not believe the wording has any meaning and merely clouds the issue.

SEN. WHEAT recalled **John Conner** stating that language is the standard in the law for people who are claiming innocence. He feels they were not trying to cut off the appeal for those people who legitimately and consistently were claiming innocence. **SEN. WHEAT** does not feel the language projects anything to inmates at MSP that they do not already know. He believes **Mr. Connor's** reason for using this language was that if someone was legitimately claiming innocence, and had been claiming innocence, is not affected.

CHAIRMAN GRIMES recalled **Mr. Connor** saying "There is never a statute of limitations on innocence."

Upon reviewing the language again, **SEN. O'NEIL** agreed with **SEN. WHEAT's** analysis.

Vote: **SEN. McGEE's** motion that **HB 171 BE CONCURRED IN AS AMENDED carried UNANIMOUSLY.** **SEN. CROMLEY** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 211

Motion: **SEN. McGEE** moved **HB 211 BE CONCURRED IN.**

Motion: **SEN. McGEE** moved **Amendment HB021102.agp BE ADOPTED, EXHIBIT(jus52a10).**

Discussion:

SEN. McGEE explained the logic behind the amendment is that the law should be blind, not based on race, and it is of little interest when a person commits a crime what his race is. Once a crime is committed, the law should treat that person without any deference whatsoever. As a person moves through the system, and comes before the probation and parole board, that same blindness needs to go forward. **SEN. McGEE** feels if standards are going to be adopted for American Indians, then those standards need to be adopted for women, Asians, and others. If there is a stipulation that American Indians, or any other segment of society, is to be regarded differently, then it is no longer justice regarding a crime and become social engineering.

CHAIRMAN GRIMES stated there has been a Native American on the Parole Board for as long as he can remember. **CHAIRMAN GRIMES** stated **SEN. GERALD PEASE** has an amendment that inserts intent language showing why only Native Americans would be represented and why that is not expanded to other minorities.

SEN. MCGEE asked if the condition for that person to be appointed to the Parole Board is not his expertise, but the fact that he is American Indian. Citizenry consists of all different genders and races. **SEN. MCGEE** is not opposed to having someone who is knowledgeable about the Native American culture, but he is opposed to setting up conditions in law. Justice must be blind and, if it is not blind, conditions are set for challenges.

SEN. CROMLEY spoke against the motion and does not see language as requiring the person to be Native American, only that the person enjoy the support of the Native American population, and that support only needs to be from one-quarter of the tribes.

SEN. PERRY stated if we are talking about a water quality board, persons on that board would be expected to know something about water. In this case, we are looking for knowledge of the subject. Currently, 25 percent of the incarcerated population is American Indian.

CHAIRMAN GRIMES stated he is not sure how tribal governments work, but his response to **SEN. MCGEE** is that he would not want someone appointed solely because of they are American Indian, but would want them appointed because of their expertise. In addition, **CHAIRMAN GRIMES** believes there was a significant amount of cultural difference that, at some point in the past for parole purposes only, the state felt it imperative that someone with that cultural knowledge be on the board.

SEN. WHEAT feels our society has singled out various groups for special treatment. We have done it with affirmative action, for the disabled, and for veterans. He does not see a problem singling out Native Americans in the context of the bill because there is a disproportionate share of Native Americans in our prison system. Therefore, we should have someone on the parole board who is aware of the Native American's cultural history and the cultural reasons, if there are any, that contributed to them being incarcerated. Isolating out Native Americans will not create an opportunity for any other group to come in and ask for special treatment. Those other individuals do not reside on reservations, and were not the Native Americans that were here when we came and took their land and moved them onto reservations. This makes Native Americans a special group that can be singled out without doing injustice to our constitutional requirements of due process.

In addition, **SEN. WHEAT** sees on page 1, lines 24 through 26, there is a requirement in the Veterans bill there is a requirement that there be two Native American members on the board appointed by the Montana-Wyoming Tribal Council. In that

bill, they thought about what happens if the tribes cannot come to an agreement. In that bill, they decided if the tribes cannot come to an agreement, the Governor will proceed and make the appointment. **SEN. WHEAT** felt maybe that provision should be added to HB 211 in case the tribes cannot agree.

SEN. O'NEIL stated there is a good chance of trouble by appointing one member who could be viewed as pro-Indian on the board. He felt it would be better to make all the members of the board knowledgeable in Native American matters. Having one member perceived as more favorable to the tribes, and a potential parolee has the right to have that member on his board for review. However, if that member is not on his board, he will have the same arguments as those in George.

CHAIRMAN GRIMES reminded **SEN. O'NEIL** that is their right now.

SEN. PEASE reminded the Committee that the title of the bill only requires one board member with two letters of support from the tribes. He believes it would be possible to get two tribes to agree on one individual. In addressing **SEN. McGEE's** concern, **SEN. PEASE** stated he agrees justice should be blind, and he is a citizen of the state of Montana, and, as such, feels he should be treated fairly. However, if he went before the parole board and saw there was not one person on the board who knew anything about where he came from and his lifestyle, he would feel out of place. Therefore, he feels someone with Native American knowledge should be on the board. **SEN. PEASE** further commented it is unfortunate that Native Americans make up 25 percent of the individuals incarcerated. **SEN. PEASE** maintained if the state is going to stay blind with the situation and still be fair, this is a good way to go about it.

SEN. PERRY purported we all have a right to trial by a jury of peers. Here, the person up for parole should have someone who would, in effect, be a peer. **SEN. PERRY** feels if that concept holds true in the selection of a jury, it could hold true in the selection of a parole board as well.

SEN. McGEE was emphatic that **SEN. PEASE** know his suggestions are not about race or American Indians.

(Tape : 5; Side : B)

As to the issue of affirmative action, that issue deals with employment and other kinds of things. The whole point of affirmative action was to render race, creed, and gender blind. Historically, the tribes have fought among themselves. **SEN. McGEE** asked what happens when a parolee comes before the board

and the Native American member is from a tribe where there has been conflict. If there is not a member on the board with knowledge of Native American culture, will the parolee have a claim to come before the board again, with that representative present. Likewise, if a white man comes before the board and there are two Native Americans, one of which is approved by the tribes, will that person have a cause of action? **SEN. McGEE** feels the understanding is about crime, not race or culture. The provisions in the constitution with regard to the Indian culture are not talking about when people break the law. The law is blind. If we are not going to make the law blind, then **SEN. McGEE** submitted they will need to go back through all of Title 45 and say when a person creates robbery, and is of American Indian descent, then special factors about the culture of American Indians are going to have to be taken into consideration by law enforcement, by the prosecutors, and by the courts, as well as by the Department of Corrections. This needs to be stopped in law. If law is not blind to every facet, so that justice is weeded out equitably to every citizen, then we have failed in our duties.

CHAIRMAN GRIMES asked **Ms. Lane** about the cause of action raised by **SEN. McGEE** because the intention is not to create more cause of actions.

Ms. Lane stated she believe the comment was made during questioning at the hearing by **Mr. Craig**, Executive Director of the Board of Pardons, requiring one member to have the sanction of two of the eight tribes, would put them back in the same position as requiring one board member to have particularized knowledge of Indian culture and problems. **Ms. Lane** has concern that the House amendment defeats the purpose of the bill and could raise the same question raised in the George case. **Ms. Lane** believed **Mr. Craig** expressed the same concern.

SEN. McGEE asked if he could amend his proposed amendment to striking just the new language on lines 24 through 26 that is underlined and in capital letters.

Motion: **SEN. McGEE** moved to strike the new language on lines 24 through 26 that is underlined and in capital letters beginning on line 24 with "in order to comply" through "governments in Montana" on line 26.

CHAIRMAN GRIMES restated that this would strike the House amendments on page 1 with the intention of resolving any unintended cause of action issue and asked who will be appointing the auxiliary members and whether those members would be appointed by the Governor.

SEN. McGEE expanded by stating that striking the language in his motion will leave in place the other language on lines 23 and 24 requiring all of the members to go through training on Native American culture which has been adopted by the board.

CHAIRMAN GRIMES stated there is still another place in the bill that requires the auxiliary members to be specifically knowledgeable about Native American culture.

SEN. McGEE directed **CHAIRMAN GRIMES** to look on page 1 where it says the board shall consist of three members, and four auxiliary members, each of whom shall have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board.

Ms. Lane directed the Committee to look at page 6, Section (9), which amends 46-23-218, authority of the board to adopt rules, and the language on lines 14 and 15, which states the rules shall also address the training of board members and auxiliary members regarding American Indian culture and problems. Current law states there are three members, and four auxiliary members, at least one of whom must have knowledge of Indian culture and problems. It does not specify if the person is an auxiliary member, but just simply that it must be one of the seven members.

SEN. McGEE added current law does not specify how a board member is going to get that knowledge.

Ms. Lane is not sure what the term "particular knowledge" means, but thought it has been interpreted to mean one member will be of Indian culture.

SEN. McGEE advised the new language attempts to make sure everyone on the board, regardless of their race, has certain training.

Ms. Lane agreed stating the language that one member must have particular knowledge was removed because the George case found that language troublesome. The bill now makes that more generic rather than particularized knowledge and provides the knowledge will be gained by the board adopting rules. The bill does not preclude the appointment of one or more Indian members.

SEN. WHEAT advised that the language **SEN. McGEE** is proposing to strike, refers to Section 2-15-108. That language requires representation of gender and minorities to the greatest extent possible. Therefore, all the House was trying to do was say 25 percent of the prison population is Native Americans; therefore, it is a minority that needs some sort of proportional

representation on the parole board. This language is simply trying to comply with the statute passed in 1991. The bill, without the amendment, is simply trying to follow the policy decision made in the early 1990s.

CHAIRMAN GRIMES expanded saying it brings up the issue of whether inserting into the Code a reference to 2-15-108 would suggest to the court, finding no other reason for requiring such a member on the board, that other minorities should be entitled to representation.

SEN. McGEE withdrew his amendment.

SEN. PERRY followed up with **SEN. WHEAT** and stated the probable reason the House made their recommendation of adding someone approved by two of the tribes, and added two members to the board, was proportionate representation.

SEN. PEASE commented that 2-15-108 is looking for a balance. The population in the women's prison in Billings is even higher at 40 percent.

CHAIRMAN GRIMES feels the issue will take a substantial amount of work because it deals with causes of action. He believed there was a united interest considering the high proportion of Native Americans. **CHAIRMAN GRIMES** suspended action on the bill to let the Committee put some more thought into the bill.

ADJOURNMENT

Adjournment: 12:45 P.M.

SEN. DUANE GRIMES, Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus52aad)